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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,526	03/23/2001	Thomas Mueller	10191/1773	8027
26646	7590	03/03/2005	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			GRIER, LAURA A	
			ART UNIT	PAPER NUMBER
			2644	

DATE MAILED: 03/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/816,526	Applicant(s) MUELLER ET AL.	
	Examiner Laura A Grier	Art Unit 2644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-17 is/are rejected.
- 7) ☒ Claim(s) 2 and 3 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 5-14, and 16-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Phillips et al., Pub No: US20020045960.

Regarding claims 5, 9, and 17, Phillips et al. (herein, Phillips) discloses a system and method for musical playlist selection in a portable audio device (figure 1- reference 100). Phillips' system comprises a display (108), which reads on a display; a set of headphones (118), which indicates a loudspeaker; and input device (110) and an I/O interface (130), which indicates an input apparatus; memory (104) and a storage device (126), which reads on a storage device; and a CODEC (114), which reads on a processor for decoding, wherein all components are coupled to a CPU (102), - paragraphs 0010-0014, 0017; further the display provides the names of different files types via the function of the CODEC (paragraph 0016) and as well, display the

titles of the music/songs, etc. (paragraph 0027), which reads on the processor and the different data carriers and different files, therein, and indicates the playback of the multimedia files via the loudspeaker, therein paragraph 0031 and 0041).

Regarding claim 2, Phillips disclose everything claimed as applied above (see claim 17).

Phillips further discloses

Regarding claim 6, Phillips disclose everything claimed as applied above (see claim 17).

Phillips further discloses memory 104 as being RAM, ROM and a flash memory, and the storage device 126 being a spinning media device, a micro-drive (paragraph 0011 and 0019), which inherently indicates disk drive, wherein the storage device being removable in an inherent characteristic of a disk drive.

Regarding claim 7, Phillips disclose everything claimed as applied above (see claim 17).

Phillips further discloses the CODEC for decoding the materials (paragraph 0014), which enables them to played back via the loudspeaker.

Regarding claim 8, Phillips disclose everything claimed as applied above (see claim 17).

Phillips inherently discloses the processor extracting the information from the multimedia file as evident by the fact that the size of the song may be displayed along with, the title, artist, frequency rate, the time, etc. (figures 5 and 6).

Regarding claims 10-12, Phillips disclose everything claimed as applied above (see claim 17). Phillips further discloses the input via the input devices indicates that the multimedia files may be play back automatically or randomly if desired by the user (paragraph 0027).

Regarding claim 13, Phillips disclose everything claimed as applied above (see claim 17). Phillips further discloses memory 104 as being RAM, ROM and a flash memory, and the storage device 126 being a spinning media device, a micro-drive (paragraph 0011 and 0019).

Regarding claim 14, Phillips disclose everything claimed as applied above (see claim 17). Phillips further discloses the multimedia files as MP3 files (paragraphs 0015-0016).

Regarding claim 16, Phillips disclose everything claimed as applied above (see claim 17). Phillips further discloses in figures 7 and 8 information display in a step-by-step format, such as listing the artist, the song title, the album title, the date, and more.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips.

Regarding claims 4 and 15, Phillips disclose everything claimed as applied above (see claim 17). Even though, Phillip discloses does not limit to the types of input devices that may be used (paragraph 0013), Phillip fails to discloses a rocker or a remote control device. The examiner takes Official Notice that various input devices were well known in the art. Thus, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Phillips by implementing a rocker for minimizing space needed

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for an input device or devices; and/or a remote control device for the purpose of providing the convenience controlling the audio device without having to be in a close proximity of the device.

6. Claims 2-3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments with respect to claims 2-17 have been considered but are moot in view of the new ground(s) of rejection.

The applicant essentially argues that the previously used prior art fails to display directories located in the memory as different type of data carriers. A new reference of prior art, Phillips et al., has been provided that provides a display of different multimedia file types, which constitutes different data carriers as well, which processed via a CODEC and the functions of a CPU.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A Grier whose telephone number is (703) 306-4819. The examiner can normally be reached on Monday - Friday, 7:30 am - 4:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh N Tran can be reached on (703) 305-4040. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Laura A. Grier
March 1, 2005